

REMARKS

Applicant has carefully reviewed the Office Action mailed on May 15, 2008. In response, claims 1-19 and 22 are pending. All claims remain as previously presented with the exception of claim 1, which has been amended, and claims 20 and 21, which were previously cancelled.

Preliminarily, Applicant affirms the election of the invention of Species I (Figures 1 and 2 and corresponding claims 1-5, 7, 12, 13 and 15-17). Claims 1-5, 7, 12, 13 and 15-17 all read on elected Species I.

With reference to the Examiner's objection to the drawings under 37 C.F.R. § 1.83(a), the Examiner respectfully disagrees with the Examiner's position. Specifically, the Examiner contends that the drawings fail to show "the spacer collar having heating elements." However, heating elements 6 are clearly shown on the spacer collar 11 in Figure 3. Thus, the objection to the drawing should be withdrawn.

Turning to the merits, claims 1-5, 7, 12 and 13 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 2,300,776 to Collins. Additionally, claims 15-17 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Collins in view of U.S. Patent No. 6,725,598 to Yoneda et al. Collins discloses a plant propagator housing an ultra-violet light source to provide artificial sunlight for the growth of plants within the propagator. Yoneda et al. discloses a plant cultivator having a LED illumination element.

The Examiner contends that Collins teaches a plant propagator 10 including a transparent cover wherein the cover includes an ultra-violet or other suitable electrified light source 20. However, it is admitted that Collins fails to disclose multiple heating elements and the heating element specifically being a resistive heater as required in claim 1. Nevertheless, the conclusion is reached that "[i]t would have been obvious to...have had multiple heating elements, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art." *See Office Action dated 5-*

15-2008, p. 5. Further, the Examiner notes that “Collins discloses using any other suitable electrified light source which would inherently include incandescent bulbs which heats through resistive heating.” *See id.*

As amended, claim 1 requires: “[a]n electrically heated plant propagator comprising or including a transparent cover or lid, characterised in that the cover or lid has electrically conductive heating elements on or in the inner surface of the cover or lid and spread about the cover or lid, the heating elements being connectable to an electric power supply by which the heating elements, through resistive heating, heat the inside of the plant propagator when the cover or lid is closed.” Support for this amendment is provided, for example, by Applicant’s drawing figures.

By providing heating elements spread about the cover or lid, the claimed invention provides more effective means of evenly heating the propagator. As a result, it eliminates “hotspots” and reduces the risk of scorching the plants within the propagator. Further, condensation on the cover or lid is substantially eliminated by such spreading of the heating elements.

Collins simply does not even remotely contemplate such an approach. Rather, Collins is limited to using a single source of ultra-violet light 20 as a heater, which is not particularly effective because the heat emitted is not equally distributed to all the plants within the propagator. Consequently, certain plants will not receive sufficient heat, while other plants will receive too much heat and become scorched. Moreover, the light source in Collins must remain on in order for the plants to receive sufficient light (which means that they always receive heat). Thus, the propagator of Collins is heated regardless of whether heating is necessary. To remedy this problem, Collins teaches the use of ventilation, which leads to other problems, such as a loss of humidity, whereas the even, controlled heating afforded by Applicant’s heaters spread about potentially avoids this problem. Collins thus does not teach the claimed elements of independent claim 1, so the rejection should be withdrawn.

As for the secondary Yoneda reference, it does nothing to limit these deficiencies of Collins and, in fact, provides the same type of uneven heat from only a single side. This establishes that in nearly sixty years, no one has proposed the invention of claim 1 (which is an indicia of unobviousness).

As for the proposed combination of Collins and Yoneda made in rejecting claims 15-17, Applicant respectfully traverses. In *KSR International Co. v. Teleflex, Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007), the U.S. Supreme Court reaffirmed the basic objective analysis for determining obviousness as stated in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), emphasizing that “rejections on obviousness cannot be sustained by mere conclusory statements.” Rather, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (*quoting In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

Applicant respectfully submits that, for several reasons, the statement made in support of the rejection does not constitute the necessary articulated reasoning with a rational underpinning necessary to create a *prima facie* case of obviousness. First of all, the argument that “it would have been obvious to . . . have modified the propagator of Collins with a sensor as taught by Yoneda et al. to be able to regulate an optimal climate for the plants” disregards the express teachings of these references. Collins is expressly concerned with providing an economical plant propagator, and teaches that the inclusion of “venting means” to control the humidity. According to Collins, this venting means may comprise a cut out over which is attached a “piece of thin pyralin 24” that in response to high humidity or warmth “curls upwardly and outwardly” to provide “automatic ventilation . . . maintaining the humidity and temperature substantially constant” (page 2, second column, lines 41-60). Adding sensors of the type disclosed in Yoneda to the Collins arrangement would thus do **nothing** productive, since the arrangement is already capable of maintaining the humidity

and temperature substantially constant.

Secondly, Yoneda specifically teaches a desirability to provide a plant cultivator that includes a "cabinet body" 2 of "hermetically sealed box construction" (col. 5, lines 20-21). The regulating sensors are thus required in light of this airtight arrangement. In stark contrast, the Collins arrangement is ventilated. In view of such ventilation, a skilled artisan viewing the teachings of Collins would have absolutely no reason to want to include a sensor that controls the environmental conditions. Indeed, such regulation would be considered a waste of resources (which is especially important today to those skilled in the art), and would fly in the face of the Collins desire to make a plant propagator that is economical.

In light of the foregoing, it is now believed that all pending claims are allowable (including the withdrawn species claims). If any issues remain, the Examiner is encouraged to contact the Applicant's counsel at the telephone number listed below in order to reduce costs and expedite the prosecution of this patent application. To the extent any fees are due for processing this response, the undersigned authorizes their deduction from Deposit Account 11-0978.

Respectfully submitted,

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